IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 764 of 2007(N)

PETITIONER:

DR.P.P.KANARAN, AGED 45 YEARS,
SON OF RARUKUTTY, SENIOR VETERINARY SURGEON,
DISTRICT VETERINARY HOSPITAL, KOZHIKODE.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, DEPARTMENT OF ANIMAL HUSBANDRY,
TRIVANDRUM.

2. THE SECRETARY,
DEPARTMENT OF ANIMAL HUSBANDRY,
TRIVANDRUM.

3. DR.M.G.RAJAN, SENIOR VETERINARY
SURGEON, VETERINARY HOSPITAL, KODANCHERRY,
KOZHIKODE DISTRICT.

BY ADV. SRI.A.ANILKUMAR
BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE PHOTOSTAT COPY OF THE GO(Rt)No.1894/AD DATED 30.12.2006.

Ext.P2 TRUE PHOTOSTAT COPY OF THE REPRESENTATION DTD. NIL SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P3 TRUE PHOTOSTAT COPY OF THE RECEIPT DTD.3.1.2007 AND ISSUED BY THE CHIEF VETERINARY OFFICER TO THE PETITIONER.

TRUE COPY

P.A.TO JUDGE

K.K.DENESAN, J

W.P.(C)NO. 764 of 2007

Dated this the 19th day of February, 2007

JUDGMENT

The petitioner and the third respondent are Senior Veterinary Surgeons in the Animal Husbandry Department. The challenge is to Ext.P1 order passed by the Government to the extent it concerns the petitioner and the third respondent.

2. As per Ext.P1, Government promoted Senior Veterinary Surgeons numbering 25 to the higher post of Assistant Directors. Simultaneously, as many as 110 Senior Veterinary Surgeons were transferred from one Veterinary Hospital to the other. The petitioner is shown against Sl.No.37 and the third respondent is shown against Sl.No.36. As per this order, the petitioner has been transferred from District Veterinary Centre, Kozhikode to Veterinary Hospital, Kodencherry in Kozhikode District. The third respondent has been transferred from Veterinary Hospital, Kodenchery to the District Veterinary Centre, Kozhikode.

3. The contentions of the petitioner are the following:

The petitioner had the opportunity to work as Senior Veterinary Surgeon only for a period of six months and that the present order of transfer is pre-mature as he has not been given the chance to work as Senior Veterinary Surgeon, District Veterinary Hospital for a minimum period of three years. He is a permanent resident of Kozhikode Town and the order of transfer will cause undue hardship to him. The third respondent is the office bearer of a service organisation which owes allegiance to one of the ruling parties and that the petitioner has been disturbed to give accommodation to the third respondent to a place of his choice. The transfer order is therefore malafide.

4. In the affidavit filed on behalf of respondents 1 and 2, it is contended that the transfer of the petitioner is not isolated one. Transfers became necessary consequent on promotions of senior hands. The third respondent is not even a member of the service orgnaisation which is referred to in the writ petition. The third respondent, by virtue of his better experience in the clinical and non-clinical side of the Veterinary Centre, was found to be a

person more suitable to carry out the duties in the District Veterinary Hospital and that no favouritism was shown to the third respondent, as alleged by the petitioner.

5. The third respondent has not entered appearance.

6. Learned counsel for the petitioner contends that the respondents are not right in stating that the third respondent has got greater experience on the clinical as well as non-clinical side. In the reply affidavit, it is asserted that the petitioner too has served both the institutions, that is to say, clinical and non-clinical, and is having sufficient experience. It is also stated that going by the date of appointment, the petitioner is senior.

7. As far as transfers and postings are concerned, seniority need not necessarily be a criterion. What is relevant is the exigencies of service. Though the petitioner also might have served on the clinical as well as non-clinical side, the choice shall be left to the Departmental authorities to utilise the services of the better experienced and the more competent in the District Centre. This Court will not weigh the comparative merit of the officers concerned or their length of experience in golden scales

in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

8. Having gone through the pleadings in the writ petition, I find that there is no scope for any interference. The order transferring the petitioner and the third respondent is not an isolated one. Transfer and posting of the third respondent forms a part of the general order of transfers and postings numbering more than hundred doctors. The contention of the petitioner that respondent No.3 is an office bearer or the Secretary of the Gazetted Officers Association is evidently incorrect. When the respondents denied the averment that the third respondent is the office bearer of Gazetted Officers Association, the petitioner has corrected that mistake in the reply affidavit saying that the name of the organisation is Kerala Gazetted Officers Federation. The above averments made in the writ petition, the counter affidavit and the reply affidavit would go to show that there is no substance in the allegation of malafides because the petitioner did not even have a clear idea about the organisation to which the third respondent belonged. The allegation that the Gazetted

Officers Association has got a link with the Communist Party of India has to be understood only in the background of the above allegations. When the fact situation, as revealed from the reply affidavit of the petitioner, is that the third respondent was an office bearer of the Kerala Gazetted Officers Federation, the allegation that the third respondent being the office bearer of the Gazetted Officers Association which owes allegiance to one of the ruling parties, is baseless. Therefore, the allegation of malafides falls to the ground. Then, there remains only the contention that the petitioner's transfer is pre-mature. Going by the prescribed norms of transfer, an officer can be allowed to continue for a period of three years in the same station, but this is not a mandatory condition. Transfers before completion of three years may become necessary. Such orders will have to be sustained in public interest and exigencies of service. Even assuming that there was not much need to disturb the petitioner when he completed only six months period, it is trite that this Court will not enforce under Article 226 of the Constitution of India. the guidelines prescribed as transfer norms by the Government, I

think, the petitioner can move the Government, if so advised. He has already done so as per Ext.P2. The first respondent has the power and discretion to consider the hardships and inconveniences highlighted by the petitioner and to give him a reposting as and when suitable vacancy arises either in Kozhikode Town or in a nearby place.

With the above observation, the writ petition is dismissed.

K.K.DENESAN, JUDGE

CSS